Supreme Court, U.S.
FILED
95 677 OCT 26 1995
NO OFFICE OF THE CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

J.D. NICHOLS and NTS CORPORATION,
Petitioners,

v.

JENO PAULUCCI and SILVER LAKES I, INC.,
individually and d/b/a PR PARTNERS,
Respondents.

Petition for Writ of Certiorari to the District Court of Appeal of Florida Fifth District

PETITION FOR WRIT OF CERTIORARI

RICHARD F. WALL
(Counsel of Record)
TODD K. NORMAN
HARTLEY & WALL
Suite 2810, Sun Bank Tower
200 S. Orange Avenue
Post Office Box 2168
Orlando, Florida 32802
(407) 422-7992
Counsel for Petitioners

October 1995

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED FOR REVIEW

Whether federal due process permits a state to exercise general jurisdiction over a nonresident general partner of one or more limited partnerships with substantial business activities in the state where the claims against the nonresident are wholly unrelated to the limited partnerships.

Whether the Florida courts' application of Florida's general jurisdiction statute to nonresidents has diverged from and conflicts with this Court's decisions that federal due process requires a nonresident defendant to have a *de facto* place of business in the forum state for that state to exercise general jurisdiction over the nonresident.

RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, petitioners NTS Corporation and J.D. Nichols state that NTS Corporation has no parent companies nor nonwholly owned subsidiaries. The caption of the case in this Court contains the names of all parties which were before the District Court of Appeal of Florida, Fifth District.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
RULE 29.6 STATEMENT	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION	4
I. A STATE'S EXERCISE OF GENERAL JURISDICTION OVER A NONRESIDENT GENERAL PARTNER OF ONE OR MORE LIMITED PARTNERSHIPS BASED ON THOSE PARTNERSHIPS' ACTIVITIES IN THE STATE IS A FAR-REACHING BUT UNRESOLVED ISSUE OF FEDERAL DUE PROCESS	4
II. FLORIDA COURTS IN FINDING GENERAL JURISDICTION UNDER THE STATE'S LONG-ARM STATUTE HAVE DIVERGED FROM AND CONFLICT WITH THIS COURT'S DECISIONS THAT DUE PROCESS REQUIRES A NONRESIDENT DEFENDANT HAVE A *DE FACTO* PLACE OF BUSINESS IN THE FORUM STATE	7
CONCLUSION	13
APPENDIX	1a

TABLE OF AUTHORITIES

Cases	Page
Applewhite v. Metro Aviation, Inc., 875 F.2d 491 (5th Cir. 1989)	11, 12
Gates Learjet Corp. v. Jensen, 743 F.2d 1325 (9th Cir. 1984)	10
Green v. Chicago, Burlington, & Quincy Railway Co., 205 U.S. 530 (1907)	13
Hanna v. Plumer, 380 U.S. 460 (1965)	6
Helicopteros Nacionales De Colombia S.A. v. Hall, 466 U.S. 408 (1984)	8, 9, 11, 13
International Harvester Co. v. Kentucky, 234 U.S. 579 (1914)	9
International Shoe Co. v. State of Washington, 326 U.S. 310 (1945)	8
Keeton v. Hustler Magazine, Inc., 465 U.S. 770 (1984)	6, 7, 8
Kelly v. State of Florida, 597 So. 2d 900 (Fla. 3d DCA 1992)	7
Layne & Bowler Corporation v. Western Well Works, Inc., 261 U.S. 387 (1923)	5
Levinson v. Brosche, 578 So. 2d 477 (Fla. 4th DCA 1991)	7
Nichols v. G.D. Searle & Co., 991 F.2d 1195 (4th Cir. 1993)	10
Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952)	8, 9
Prentice v. Prentice Colour, Inc., 779 F.Supp. 578 (M.D. Fla. 1991)	5
Provident National Bank v. California Federal Savings & Loan Association, 819 F.2d 434 (3rd Cir. 1987)	9
Rice v. Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70 (1955)	6
Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516 (1923)	9
St. Louis Southwestern Railway Co. of Texas v. Alexander, 227 U.S. 218 (1913)	9
Seymour v. Parke, Davis & Co., 423 F.2d 584 (1st Cir. 1970)	10

TABLE OF AUTHORITIES—Continued

Page

United Electrical, Radio and Machine Workers of America v. 163 Pleasant Street Corp., 960 F.2d 1080 (1st Cir. 1992) 11

Universal Carribean Establishment v. Bard, 543 So. 2d 447 (Fla. 4th DCA 1989) 13

Wilson v. Belin, 20 F.3d 644 (5th Cir. 1994) 10

World-Wide Volkswagon Corp. v. Woodson, 444 U.S. 286 (1980) 5, 6

Statute

§ 48.193, Florida Statutes (1991) 2, 3, 13

Miscellaneous

Timothy D. Wheeler, *Partnership Returns*, 1992, Statistics of Income Bulletin, Fall 1994 at 75 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

No. ———

J.D. NICHOLS and NTS CORPORATION,
Petitioners,

v.

JENO PAULUCCI and SILVER LAKES I, INC.,
individually and d/b/a PR PARTNERS,
Respondents.

Petition for Writ of Certiorari to the District Court of Appeal of Florida Fifth District

---

PETITION FOR WRIT OF CERTIORARI

NTS Corporation ("NTS") and J.D. Nichols ("NICHOLS") respectfully petition for a writ of certiorari to review the judgment of the District Court of Appeal of Florida, Fifth District, in this case.

OPINIONS BELOW

The Opinion of the District Court of Appeal of Florida, Fifth District (1a-9a)* is reported at 652 So. 2d 389. The decision of the Circuit Court of the Ninth Judicial Circuit, in and for Seminole County, Florida (10a) is unreported. The decision of the Supreme Court of Florida (11a) has not yet been reported.

---

* References to Petitioners' Appendix are indicated in parentheses by the appropriate page number followed by a.

JURISDICTION

The judgment of the District Court of Appeal of Florida, Fifth District, was issued on February 10, 1995. Timely motions for rehearing, for rehearing en banc, and for certification were denied on April 4, 1995. The Supreme Court of Florida denied discretionary review of the district court's judgment on July 31, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV, Section 1, United States Constitution:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of laws.

Florida Statutes, § 48.193(2) (1991):

> A defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.

STATEMENT OF THE CASE

Respondents, JENO PAULUCCI and SILVER LAKES I, INC., individually and d/b/a PR PARTNERS (collectively "PR PARTNERS") sued NICHOLS, NTS, and others for a variety of claims related to the development of real property in Florida under a joint venture agreement between Orlando Lake Forest, Inc., and PR PARTNERS. (2a-3a) In the trial court, PR PARTNERS as-

serted specific and general long-arm jurisdiction over NICHOLS and NTS as nonresidents under Sections 48.193(1) and (2), Florida Statutes (1991). (3a) NICHOLS and NTS moved to challenge the assertion of both specific and general jurisdiction over them as nonresidents denying any acts placing them within the scope of Florida's long-arm statute and affirmatively alleging lack of contacts with Florida sufficient to satisfy federal Due Process. (12a-14a) After an evidentiary hearing, the trial court denied the motion challenging jurisdiction without making any findings of fact or conclusions of law. (1a, 10a)

NICHOLS and NTS took a non-final appeal of the trial court's order to the district court pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(C)(i). (1a, n.1) On appeal PR PARTNERS conceded that NICHOLS and NTS were not subject to specific personal jurisdiction under Section 48.193(1) but urged general jurisdiction under Section 48.193(2) based on NICHOLS's and NTS's contacts with Florida. (3a, n.2) The district court affirmed the trial court's exercise of general personal jurisdiction by construing the "continuous and systematic general business contacts" requirement of federal constitutional due process as coextensive with the "substantial and not isolated" language of Section 48.193(2) and determinative of general jurisdiction over NICHOLS and NTS. (3a-4a)

General jurisdiction over NICHOLS was based primarily on the activities of several limited partnerships which did business in the State of Florida of which NICHOLS was a general partner. (4a-6a) His status as a general partner of these limited partnerships and the activities of those limited partnerships were unrelated to PR PARTNERS' claims against him. While the district court rejected the assertion that NICHOLS could be subject to general jurisdiction solely on the basis of his status as general partner, the district court attributed to him

the activities of these limited partnerships. (5a-6a) NICHOLS also spent two days per year in Florida on business, executed a guarantee payable in Indiana for the mortgage on the joint venture's real property, and had previously owned a vacation home in Florida which he sold prior to the commencement of the lawsuit, all of which the court conceded were insufficient to confer general jurisdiction when taken alone. (6a)

General jurisdiction over NTS was based on services NTS provided for affiliated companies in Florida, common officers and directors between NTS and some of these affiliates, control which NTS exercised in overseeing these affiliates, and NTS's guarantee payable in Indiana of the joint venture's mortgage. (8a) All of the activities NTS was attributed with by the district court were the provision of assistance to affiliates in Florida. (8a)

The Supreme Court of Florida declined to review this decision. (11a)

REASONS FOR GRANTING THE PETITION

I. A STATE'S EXERCISE OF GENERAL JURISDICTION OVER A NONRESIDENT GENERAL PARTNER OF ONE OR MORE LIMITED PARTNERSHIPS BASED ON THOSE PARTNERSHIPS' ACTIVITIES IN THE STATE IS A FAR-REACHING BUT UNRESOLVED ISSUE OF FEDERAL DUE PROCESS

The first issue is whether, solely on the basis of the activities of one or more limited partnerships in a state, a nonresident general partner of those partnerships is subject to general jurisdiction in that state for claims wholly unrelated to the limited partnerships' activities. The only significant contact NICHOLS has with Florida is that he is a general partner of limited partnerships which do business in the state of Florida. The business of these limited partnerships is entirely unrelated to the claims asserted by PR PARTNERS against NICHOLS. Nevertheless, the district court attributed the activities of those partnerships

to NICHOLS to support general jurisdiction over him for these unrelated claims. This ruling subjects a nonresident general partner, without more, to general personal jurisdiction in any state in which one or more of his limited partnerships did sufficient business to subject itself to personal jurisdiction.

The Court should review this issue as one of public importance, not merely importance to the parties involved in this litigation. *Layne & Bowler Corporation v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923). Limited partnerships are a common business form in today's economy with 270,748 limited partnerships comprised of 11,313,483 partners existing in the United States in 1992. Timothy D. Wheeler, *Partnership Returns*, 1992, Statistics of Income Bulletin, Fall 1994 at 75, 77. Where general partners of these limited partnerships can be haled into an out-of-state court to defend lawsuits unrelated to the business of the limited partnerships is a matter which concerns a large segment of the business population and affects the way business is structured throughout the United States.

The Due Process Clause limits a state's ability to force a nonresident defendant to defend a lawsuit and ensures that the different states recognize each others' status as coequal sovereigns in the federal system. *World-Wide Volkswagon Corp. v. Woodson*, 444 U.S. 286, 291-292 (1980). Even though this is an important Constitutional principle, in the view of at least one federal court there is no established, systematic method to determine the extent to which a state can exercise general jurisdiction over nonresidents. *Prentice v. Prentice Colour, Inc.*, 779 F. Supp. 578, 583 (M.D. Fla. 1991) Moreover, no decision of this Court or any other court appears to decide whether the activities of one or more limited partnerships, sufficient to subject those partnerships to general jurisdiction, can also be used to subject their nonresident general partners to general jurisdiction for lawsuits unre-

lated to the limited partnerships. This combination of an important Constitutional right of a large segment of the business population and the lack of a systematic due process analysis takes this problem "beyond the academic or episodic." *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955). Rather, this is a problem which affects a significant business population and will create unnecessary, repetitive litigation until a systematic method of analysis is formulated.

This Court's resolution also will insure uniformity of federal and state civil procedure in consonance with constitutional parameters. *Hanna v. Plumer*, 380 U.S. 460, 463 (1965). Without direction from this Court, federal and state courts will be left to their own divergent due process rules.

The district court in this case fashioned just such a rule. It determined that a nonresident general partner could be attributed the contacts of one or more limited partnerships for purposes of general jurisdiction. This Court should determine if such attribution of contacts satisfies the due process rights of nonresident general partners.

The need for this Court's intervention into this important issue is further necessitated by the district court's break from the essential requirements of general jurisdiction in creating this due process rule of attribution of partnership activities. This Court has limited personal jurisdiction to a forum in which a party "should reasonably anticipate being haled into court." *World-Wide Volkswagen Corp.*, 444 U.S. at 297. It is established that a party's acts in a forum which cause it to reasonably anticipate being haled into that forum's court based on specific jurisdiction do not necessarily mean that the same nonresident should reasonably anticipate being haled into court in that forum under general jurisdiction. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779-781 (1984).

The district court found general jurisdiction over NICHOLS by relying on decisions involving specific jurisdiction over general partners. *See Kelly v. State of Florida*, 597 So. 2d 900, 902 (Fla. 3d DCA 1992) (court holds that "because appellants [partners] were personally liable for the partnership's debts, appellants should have reasonably anticipated being haled into court in Florida", thus finding specific jurisdiction); *Levinson v. Brosche*, 578 So. 2d 477 (Fla. 4th DCA 1991) (court finds minimum contacts for general partner because limited partnership has minimum contacts). This removes any real distinction between specific and general jurisdiction and violates the principles announced in *Keeton*. It allows general jurisdiction over a nonresident simply because he may be liable for the acts of a limited partnership and could be subject to specific jurisdiction for those acts. It permits a state to exercise jurisdiction over a nonresident for any lawsuit as if he was an actual resident. It obliterates the jurisdictional meaning of residency.

This is an important issue of federal Constitutional law and civil procedure which requires this Court's attention to create uniformity of due process rights for a significant segment of the business community. The Florida district court attempted to resolve this issue, but in doing so substantially departed from reasonable due process requirements for general jurisdiction.

II. FLORIDA COURTS IN FINDING GENERAL JURISDICTION UNDER THE STATE'S LONG-ARM STATUTE HAVE DIVERGED FROM AND CONFLICT WITH THIS COURT'S DECISIONS THAT DUE PROCESS REQUIRES A NONRESIDENT DEFENDANT HAVE A *DE FACTO* PLACE OF BUSINESS IN THE FORUM STATE

The district court found general jurisdiction over NTS based primarily on its contacts with affiliates located in Florida. It found general jurisdiction over NICHOLS primarily by attributing to NICHOLS the activities in

Florida of several limited partnerships for which he was a general partner. These contacts do not amount to the "presence" in Florida required by this Court's applications of due process to the general jurisdiction problem.

This Court has insisted that a nonresident maintain a "presence" in a forum to be subject to personal jurisdiction in that forum. *International Shoe Co. v. State of Washington*, 326 U.S. 310, 315-317 (1945). The level of contacts required for that "presence" increases with the unrelatedness of those contacts to the cause of action. *Id.* Where, as here, activities of a nonresident defendant unrelated to the current cause of action are urged to establish a presence sufficient to support general jurisdiction, this Court has required "continuous corporate operations within a state [which] were thought so substantial and of such a nature as to justify a suit against it on causes of action arising from dealings entirely distinct from those activities.' *Id.* at 318. This has been reduced to the shorthand statement that the nonresident have "continuous and systematic general business contacts" within the forum state. *Helicopteros Nacionales De Colombia S.A. v. Hall*, 466 U.S. 408, 416 (1984).

The parameters of this presence can best be understood by reading the leading case in which this Court found that the due process requirements for general jurisdiction were met. In *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), the corporate defendant had been forced to shut down its operations in the Philippines and began conducting the corporation's activities from an office in the forum state. *Id.* at 447-448. From the office in the forum state the president and general manager of the defendant corporation made key decisions, kept the office files, handled payroll, maintained corporate bank accounts, and held directors' meetings. *Id.* In short, in *Perkins* the corporate defendant had established its *de facto* principal place of business in the forum state. *Keeton*, 465 U.S. at 779 n. 11 (1984). In

such an instance "continuous and systematic" presence of the nonresident in the forum state was found. *Perkins*, 342 U.S. at 448.

The *Perkins* decision is typical of the very few federal cases in which general jurisdiction has been upheld. Generally, these cases involve the operation of a significant part of the nonresident's business by agents of the nonresident in the forum state on a daily basis. *International Harvester Co. v. Kentucky*, 234 U.S. 579, 585-586 (1914) (court finds general jurisdiction where agents of nonresident carried out a "continuous course of business" in forum state); *St. Louis Southwestern Railway Co. of Texas v. Alexander*, 227 U.S. 218, 228 (1913) (court finds general jurisdiction where agent of nonresident negotiated and settled claims for it out of office of nonresident in forum state); *Provident National Bank v. California Federal Savings & Loan Association*, 819 F.2d 434, 438 (3rd Cir. 1987) (court finds general jurisdiction where "every business day" the nonresident performed activity "central to the conduct of its business" in the forum state). The presence this Court requires can best be described as a *de facto* place of business of the nonresident in the forum state to carry on the nonresident's daily business.

This Court has not found presence, for general jurisdiction purposes, in cases where the Court was presented with numerous contacts, but the nonresident did not run a daily business in the forum. *See Helicopteros*, 466 U.S. at 416-418 (large volume of corporate purchases, training of corporate employees, and negotiation of corporate contracts in forum not sufficient to create continuous and systematic business contacts); *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516, 518 (1923) (no general jurisdiction even though there are numerous purchases and visits to forum but no daily business activities).

These decisions have been applied by the lower federal courts to look for "a community into whose business life

the defendant had significantly entered as determined by the quality, substantiality, continuity, and systematic nature of its activities." *Seymour v. Parke, Davis & Co.*, 423 F.2d 584, 587 (1st Cir. 1970). Federal courts have uniformly required that these contacts be part of a continuous chain of activity rather than isolated events. *Wilson v. Belin*, 20 F.3d 644, 650-651 (5th Cir. 1994) (court holds that numerous "unrelated contacts" were not sufficient for general jurisdiction because they were sporadic); *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984) (court holds general jurisdiction does not apply because contacts were "occasional" and "infrequent"). Even if these contacts are a regular series of events they must also be substantial to warrant the exercise of general jurisdiction. *Nichols v. G.D. Searle & Co.*, 991 F.2d 195, 1199 (4th Cir. 1993). Equally important, in each case in which general jurisdiction was found the nature of the nonresident's presence in the forum involved the business purposes of the entity whose activities in the forum gave rise to general jurisdiction.

More than just conflicting with this Court's decisions, this case shows how far Florida courts have diverged from the due process principles enunciated by this Court for general jurisdiction over nonresidents, as followed by other federal courts. Here all of the activities of NTS used to support general jurisdiction were the provision of assistance to its Florida affiliates. This assistance included loan guarantees to nonresident lenders, the operation of central accounting for its affiliates, provision of management and design personnel and services by a subsidiary of NTS, central payment of expenses, billing affiliates for these services and expenses, certain common officers and directors, and monitoring of affiliates. Most of these activities were actually carried on outside the forum state for affiliates within the forum state. The district court held this was sufficient for general jurisdiction.

Lower federal courts, in applying the due process requirements announced by this Court, routinely require

a much higher standard for general jurisdiction when considering similar activities between affiliated companies. For instance, in *United Electrical, Radio and Machine Workers of America v. 163 Pleasant Street Corp.*, 60 F.2d 1080 (1st Cir. 1992), the court was faced with an assertion of general jurisdiction over a parent company whose contacts with its subsidiary in the forum state were very similar to the contacts in the case below. There the parent negotiated agreements on behalf of the subsidiary, appointed its directors to the subsidiary's board of directors, paid the salary of some of the directors of both entities, oversaw and directed the affiliate's financial affairs, provided financial statements to the subsidiary's creditors, and provided the subsidiary with $8,000,000 in cash, goods and services. *Id.* at 1083-1084. The court of appeals found these contacts "manifestly insufficient" for general jurisdiction under the standard this Court defined in *Helicopteros. United Electrical*, 960 F.2d at 1088. In the case below NTS undertook similar activities; such as, assurances to creditors, common board members, and monitoring.

Similarly, in *Applewhite v. Metro Aviation, Inc.*, 875 F.2d 491 (5th Cir. 1989), the court of appeals took a fact situation nearly identical to this case and found that it did not meet the constitutional requirements of general jurisdiction. *Applewhite* involved a holding company and several affiliates which were all electric companies. *Id.* at 496. The issue was one of general jurisdiction over a nonresident affiliate of the holding company. The contacts with the forum state in that case included the transmission of electricity into the forum state, a centralized billing system run by the holding company, the sale of electricity in the forum state, a committee formed by the affiliates for joint decision making, participation in joint projects in the forum state, and loaning employees to affiliates in the forum state. *Id.* at 496-497. While these contacts were numerous, the court found that they were neither of a "continuous and systematic" nature nor

showed "purposeful availment" that this Court's decisions have required for general jurisdiction. *Id.* at 498. As a result, due process was not satisfied and there was no general jurisdiction over the nonresident affiliate. *Id.* The case below contains many of the same activities by NTS; that is, common billings of affiliates, loaned employees, and centralized decision making. Nevertheless, the district court reached the opposite outcome.

Comparing the activities of NTS against those of the parent corporation and of the affiliate in the above opinions from the courts of appeals shows that the Florida state courts apply a due process standard for general jurisdiction far below and inconsistent with the standards of this Court followed by the lower federal courts.

The same considerations apply to NICHOLS. Without attribution of the activities in Florida of the limited partnerships for which he is a general partner, Florida's assertion of general jurisdiction over NICHOLS rests on his physical presence two days a year in Florida, his guarantee executed outside of Florida to an out-of-state lender, and his former ownership of a Florida vacation home. These facts are clearly not enough to show that NICHOLS has a *de facto* place of business in Florida. Even with attribution of the limited partnership activities, the due process requirements for general jurisdiction are not satisfied. The claims asserted against NICHOLS are in no way related to the business purposes of the limited partnerships' presence in Florida and the actual involvement of NICHOLS in the affairs of those limited partnerships is so limited that it cannot meet the test of substantiality and continuity to show that NICHOLS maintains a *de facto* place of business in Florida.

It is not merely that the decision in this case is erroneous when measured against the due process principles established by this Court that provides the reason for reviewing the district court's decision. More to the point, this case is typical of the decision of Florida courts which

have interpreted § 48.193(2) beyond the permissible parameters of general jurisdiction under the Due Process Clause. *Compare Universal Caribbean Establishment v. Bard*, 543 So. 2d 447 (Fla. 4th DCA 1989) (court allows general jurisdiction based on solicitation of tours by defendant's agent in the forum state) with *Green v. Chicago, Burlington, & Quincy Railway Co.*, 205 U.S. 530 (1907) (solicitation by an agent of the defendant in the forum state is not sufficient for personal jurisdiction).

The district court in this case has followed the pattern of Florida case law, allowing general jurisdiction under a much lower threshold than that required by the rulings of this Court. It is this lack of uniformity in the application of due process rights which requires correction by this Court. As the Court has not addressed the due process requirements for general jurisdiction in the decade since deciding *Helicopteros*, it is appropriate to revisit the issue in the context of this case.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

RICHARD F. WALL
(Counsel of Record)
TODD K. NORMAN
HARTLEY & WALL
Suite 2810, Sun Bank Tower
200 S. Orange Avenue
Post Office Box 2168
Orlando, Florida 32802
(407) 422-7992
Counsel for Petitioners

October 1995

APPENDICES

APPENDIX A

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT
JANUARY TERM 1995

Case No. 93-2609

J. D. NICHOLS and NTS CORPORATION,
Appellants,

v.

JENO PAULUCCI and SILVER LAKES, I, INC., a Florida corporation, individually and d/b/a PR PARTNERS, a Florida general partnership,
Appellees.

Opinion filed February 10, 1995

Non-Final Appeal from the Circuit Court
for Seminole County,
Robert B. McGregor, Judge.

DIAMANTIS, J.

J. D. Nichols (Nichols) and NTS Corporation (NTS) appeal the trial court's non-final order denying their motion to dismiss for lack of personal jurisdiction.[1] After conducting an evidentiary hearing in accordance with *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499 (Fla. 1989), the trial court concluded that it possessed personal jurisdiction over both Nichols and NTS. We agree and, thus, affirm the order under review.

---

[1] Appellate review of this order is proper pursuant to rule 9.130(a)(3)(C)(i) of the Florida Rules of Appellate Procedure.

In August 1992, the appellees, Jeno Paulucci and Silver Lakes I, Inc., individually and d/b/a PR Partners, filed a complaint for damages and declaratory relief against Nichols, NTS, NTS/Florida Residential Properties, Inc., Orlando Lake Forest, Inc., and Banc One Mortgage Corporation. The complaint asserted that the court had personal jurisdiction over all named defendants pursuant to Florida's long-arm statute, section 48.193, Florida Statutes (1991).

The complaint stated that PR Partners and NTS/Florida Residential Properties, Inc. (NTS/Residential), a Florida corporation, entered into a joint venture agreement for the purpose of holding and developing real property in Seminole County. Pursuant to an amendment to the joint venture agreement, NTS/Residential assigned its interest in the joint venture to defendant Orlando Lake Forest, Inc. (OLF, Inc.), also a Florida corporation, and the joint venture became known as the OLF joint venture. The complaint alleged that OLF, Inc., was the alter ego of NTS, a Kentucky corporation. Banc One held a mortgage on the OLF joint venture's real property, and Paulucci and Nichols both executed personal guaranties relative thereto in favor of Banc One. In May 1991, NTS, OLF, Inc., and NTS/Residential sent a letter to PR Partners offering to purchase its interest in the OLF joint venture. The complaint alleged that, once fully executed by all relevant parties, the May 1991 letter became a binding sale contract for PR Partners' interest in the OLF joint venture.

The complaint asserted counts for an accounting of the OLF joint venture's financial affairs (Count II) and for dissolution of the OLF joint venture (Count III). Against NTS, NTS/Residential and OLF, Inc., the complaint asserted a count for breach of the sale contract (Count I). Against Nichols, NTS/Residential, and OLF, Inc., the complaint asserted counts for fraudulent misrepresentation (Count IV), for breach of fiduciary duty

(Count V), and for breach of the joint venture agreement (Count VI). Against Nichols, NTS, and OLF, Inc., the complaint asserted a count for breach of the loan agreement or subrogation, and/or foreclosure (Count VIII). Against Banc One, the complaint asserted a count for breach of guaranty and loan documents (Count VII). Finally, the complaint asserted a count for declaratory judgment against all named defendants (Count IX).

In the trial court, the appellees relied upon sections 48.193(1) and (2), Florida Statutes (1991), to support their contention that the trial court possessed jurisdiction over Nichols and NTS. On appeal, however, the appellees rely only upon section 48.193(2).[2] In August 1992, when the appellees filed this action, section 48.193(2) provided:

> A defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.

§ 48.193(2), Fla. Stat. (1991).

In construing the requirement of "substantial and not isolated activity," Florida courts have harmonized this language with the constitutional due process requirements enunciated in *Helicopteros Nacionales de Colombia S.A. v. Hall*, 466 U.S. 408, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984). *See American Overseas Marine Corp. v. Patterson*, 632 So. 2d 1124, 1128 (Fla. 1st DCA), *rev. denied*, 641 So. 2d 1346 (Fla. 1994). In *Helicopteros*, the Supreme Court held that "continuous and systematic general business contacts" were required before a forum could exercise general jurisdiction over a nonresident defendant. *Helicopteros*, 466 U.S. at 416. The Court ex-

[2] The appellees apparently concede that Nichols and NTS are not subject to the trial court's jurisdiction under any of the provisions of section 48.193(1).

plained that a state exercises "general", as opposed to "specific", jurisdiction over a defendant when the cause of action does not arise out of, and is not related to, the defendant's contacts with the state. *Helicopteros*, 466 U.S. at 414 n.9. *See also White v. Pepsico, Inc.*, 568 So. 2d 886, 888 n.3 (Fla. 1990). The due process standard of *Helicopteros* applies in this case because section 48.193(2) requires no causal connection between a plaintiff's claim and the defendant's contacts with the state. *See American Overseas Marine Corp. v. Patterson*, 632 So. 2d at 1127-28.

We shall discuss separately the provisions of section 48.193(2) as applied to Nichols and NTS.

Personal Jurisdiction over Nichols

The record evidence supports the trial court's ruling that Nichols' activities within the state of Florida were sufficient to subject him to the trial court's jurisdiction under section 48.193(2). The undisputed evidence reflected that Nichols was a general partner of several Florida limited partnerships, some of which currently or formerly did business in the state of Florida. Specifically, two of the Florida partnerships, NTS/Sabal Office Limited Partnership and Sabal Point Country Club, Ltd., owned, respectively, an office building and a country club in Seminole County. Nichols also was a general partner of NTS-Properties Plus Associates, Ltd., a Kentucky limited partnership which was registered to do business in Florida and which, in turn, was a general partner of NTS-Properties Plus Ltd., a Florida limited partnership which owned, developed, and leased commercial properties in Florida. Additionally, Nichols was a general partner of NTS-Properties Associates V, Ltd., a Kentucky limited partnership which, in turn, was a general partner of NTS-Properties V, a Maryland limited partnership. NTS-Properties V also was registered to do business in Florida, and it owned, developed, and leased commercial properties in Florida. Finally, Nichols was a general partner of

NTS-Properties Associates IV, Ltd., a Kentucky limited partnership which owned an interest in an apartment complex in Seminole County.

At the hearing conducted on the motion to dismiss, Nichols testified that he was not actively involved in the operation or management of the partnerships. According to Nichols, his involvement was limited to signing documents. Despite Nichols' efforts to distance himself from his partnerships' activities within the state of Florida, it was proper for the trial court to consider these activities in determining that Nichols had continuous and systematic general business contacts in Florida. Florida courts have recognized that, because a limited partnership gains its identity from its general partners, the limited partnership's contacts with a particular forum may be attributed to the general partners. *Kelly v. Department of Insurance*, 597 So. 2d 900 (Fla. 3d DCA 1992); *Levinson v. Brosche*, 578 So. 2d 477 (Fla. 4th DCA 1991).[3] *See also Vespe Contracting Co. v. Anvan Corp.*, 433 F. Supp. 1226 (E.D. Pa. 1977) (recognizing that same principle applies where defendant is general partner of limited partnership

---

[3] Although we conclude that a limited partnership's contacts may be considered in determining whether a nonresident general partner has engaged in substantial activities within the state, we reject the appellees' suggestion that a nonresident's mere status as a general partner in a Florida limited partnership necessarily subjects the nonresident to the general jurisdiction of the courts of this state under section 48.193(2). In contrast, where the cause of action arises out of the limited partnership's active conduct of business in Florida, the nonresident general partner will be subject to the specific jurisdiction of Florida's courts under section 48.193(1). *See In re Estate of Vernon*, 609 So. 2d 128 (Fla. 4th DCA 1992); *Renda v. Peoples Federal Savings & Loan Ass'n*, 538 So. 2d 860 (Fla. 1nt DCA 1988), *rev. denied*, 542 So. 2d 1334 (Fla. 1989). This rule does not apply to a limited partner, whose interest in the limited partnership is more analogous to that of a stockholder in a corporation, *id.* at 863, or that of a corporate officer and director. *Klein v. Mega Trading, Ltd., ex rel. Hochman*, 416 So. 2d 866 (Fla. 3d DCA 1982).

which, in turn, is general partner of limited partnership with contacts with state).

In addition to these partnership activities, Nichols acknowledged at the hearing that he spent an average of two days per year in Florida in connection with the partnerships' business. Finally, with regard to the subject matter of this lawsuit, Nichols acknowledged that he signed a personal guaranty in favor of Banc One relative to the mortgage which the bank held on the OLF joint venture's real property.[4]

We recognize that, standing alone, any one of Nichols' contacts with the state of Florida might not constitute substantial activity within the meaning of section 48.193 (2).[5] When viewed in its entirety, however, the evidence presented in this case supports the trial court's ruling that it possessed personal jurisdiction over Nichols.[6]

---

[4] Although the evidence at the hearing focused on Nichols' business contacts with the state of Florida, Nichols' pre-hearing affidavit also revealed that he formerly owned a vacation home in Palm Beach County which he occasionally visited and which he sold in March 1992.

[5] By itself, ownership of property is insufficient to subject a nonresident defendant to the jurisdiction of the courts of this state, unless the cause of action arose out of such ownership. *See* 48.193(1)(c), Fla. Stat. (1991). Further, the mere execution of a guaranty generally is insufficient to subject a nonresident defendant to the jurisdiction of a Florida court. *See Holton v. Prosperity Bank*, 602 So. 2d 659, 662-63 (Fla. 5th DCA 1992). *See also Pleuss-Staufer Industries v. Rollason Engineering & Manufacturing, Inc.*, 635 So. 2d 1070, 1073 n.10 (Fla. 5th DCA 1994). *Cf. Hamilton v. Business Assistance Consortium, Inc.*, 602 So. 2d 619 (Fla. 3d DCA 1992).

[6] In reaching this conclusion, we did not consider any activities Nichols performed as an officer or director of the different NTS corporations, including NTS, NTS/Residential, and OLF, Inc. *See Doe v. Thompson*, 620 So. 2d 1004 (Fla. 1993) (recognizing distinction between corporate officer acting on behalf of himself and corporate officer acting on behalf of his corporation). *Accord Eller v. Allen*, 623 So. 2d 545 (Fla. 5th DCA 1993), *rev. denied*, 634 So. 2d 622 (Fla. 1994).

Personal Jurisdiction over NTS

In *Qualley v. International Air Service Co.*, 595 So. 2d 194 (Fla. 3d DCA), *cause dismissed*, 605 So. 2d 1265 (Fla. 1992), the court discussed when a nonresident parent corporation is subject to personal jurisdiction in Florida:

> [T]he presence of a subsidiary corporation within Florida is not enough, without more, to subject a non-Florida parent corporation to long-arm jurisdiction within this state. . . . The rule is otherwise where, for example, the alter ego test can be met. . . . or where the non-Florida parent company independently satisfies the test for jurisdiction under Florida's long-arm statutes; . . . .

Qualley, 595 So. 2d at 196 (citations omitted).

The evidence in this case fails to support the theory that NTS is the alter ego of defendants NTS/Residential or OLF, Inc.,[7] because, although the appellees asserted this theory in their complaint, they failed to claim at the evidentiary hearing or on appeal that NTS, NTS/Residential, or OLF, Inc., was formed for an improper purpose. *Cf. Woods v. Jorgensen*, 522 So. 2d 935, 937 (Fla. 1st DCA 1988).

Based on the record evidence, however, we conclude that the trial court properly ruled that it had acquired personal jurisdiction over NTS under section 48.193(2). Even if NTS technically was not the parent corporation of defendants NTS/Residetial or OLF, Inc., through any ownership interest therein, NTS is subject to the personal jurisdiction of the courts of this state because of the extent of NTS's contacts with the OLF joint venture, as well as the degree of control NTS exercised over NTS/Residential and OLF, Inc. *See Universal Caribbean Establish-*

---

[7] *See Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114, 1120-21 (Fla. 1984).

ment v. Bard, 543 So. 2d 447 (Fla. 4th DCA 1989). *See also Richard Bertram & Co. v. American Marine, Ltd.*, 258 So. 2d 335 (Fla. 3d DCA 1972).

The evidence showed that NTS was engaged in the following activities in Florida: NTS was a guarantor on the OLF joint venture's $13 million load held by Banc One; NTS's consolidated accounting system performed accounting services for defendants NTS/Residential and OLF, Inc.; under this system. NTS issued checks to cover expenses related to the OLF joint venture, including travel expenses and legal fees; NTS then billed the OLF joint venture for legal fees paid on its behalf; NTS also billed the OLF joint venture and OLF, Inc., for management services provided by NTS; NTS's decorator/architect traveled to Florida and performed services for the OLF joint venture (for which NTS later billed the joint venture), as well as for other Florida partnerships; NTS issued invoices and purchases orders relative to the OLF joint venture; NTS was listed as the customer on the Florida Power & Light account for the OLF joint venture; correspondence relative to the OLF joint venture was addressed to Paulucci on NTS letterhead; NTS also issued checks on behalf of Nichols' partnerships in Florida, and NTS charged the partnerships for expenses and services incurred on their behalf; some NTS officers and directors also were officers and director of NTS/Residential and OLF, Inc.; NTS's president and chief operating officer monitored the developments and projects of OLF, Inc., from his office in Louisville on almost a daily basis, and he visited NTS entities in Florida on a monthly basis; and Nichols visited NTS entities in Florida on an annual basis, and he exercised ultimate control over the NTS entities.

Accordingly, the trial court properly ruled that it had acquired personal jurisdiction over NTS based on NTS's

substantial activities within the state of Florida.[8] *See Universal Caribbean*, 543 So. 2d at 448. *Cf. Qualley v. International Air Service Co.*, 595 So. 2d 194 (Fla. 3d DCA) (California parent company's mere performance of accounting and payroll functions for subsidiary doing business in Miami was insufficient activity to subject parent company to jurisdiction under section 48.193), *cause dismissed*, 605 So. 2d 1265 (Fla. 1992).

AFFIRMED.

PETERSON and GRIFFIN, JJ., concur.

---

[8] We reject the contention that the trial court erred in conducting a full *Venetian Salami* evidentiary hearing at which the court permitted the appellees to present evidence on the broad jurisdictional issue of whether NTS's and Nichols' activities within the state of Florida were sufficient to subject them to the trial court's jurisdiction. Nichols and NTS argue that this was error because the trial court earlier had entered an order limiting the hearing's jurisdictional issue to that of whether a general partner who registered to do business in Florida thereby subjected himself to the personal jurisdiction of the courts of this state. We conclude that, by failing to move for a continuance at the hearing, NTS and Nichols waived the right to claim that they were prejudiced by the trial court's ruling admitting the additional evidence. *See Batista v. Waler & Bernstein, P.A.*, 378 So. 2d 1321 (Fla. 3d DCA 1980). *See also Leviton v. Philly Steak-out, Inc.*, 533 So. 2d 905 (Fla. 3d DCA 1988). We also note that NTS's and Nichols' claim of procedural prejudice is weakened by their decision on appeal to request an outright reversal of the trial court's ruling rather than a remand for a new evidentiary hearing at which they might present additional evidence relevant to the dispositive issues in this case.

APPENDIX B

IN THE CIRCUIT COURT
OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

Case No. 92-2231-CA-16-K

JENO PAULUCCI, and SILVER LAKES I, INC., a Florida corporation, individually and d/b/a PR PARTNERS, a Florida general Partnership,

Plaintiffs,

vs.

J.D. NICHOLS, NTS CORPORATION, a Kentucky corporation, NTS/FLORIDA RESIDENTIAL PROPERTIES, INC., a Florida corporation, ORLANDO LAKE FOREST, INC., a Florida corporation and BANC ONE MORTGAGE CORPORATION, a foreign corporation,

Defendants.

ORDER DENYING DEFENDANT-NICHOLS' AND DEFENDANT-NTS CORPORATION's MOTION TO DISMISS FOR LACK OF JURISDICTION

THIS CAUSE came on for consideration for an evidentiary hearing in accordance with the procedure as set forth in *Venetian Salami v. J. S. Parthenais,* 554 So.2d 499 (Fla. 1989), and the Court having heard the argument of counsel, it is therefore

ORDERED AND ADJUDGED that Defendants' Motion to Dismiss for Lack of Personal Jurisdiction is hereby DENIED.

DONE and ORDERED in Sanford, Seminole County, Florida, this 4th day of October, 1993.

/s/ Robert B. McGregor
ROBERT B. MCGREGOR
Circuit Judge

APPENDIX C

MONDAY, JULY 31, 1995

SUPREME COURT OF FLORIDA

Case No. 85,663

District Court of Appeal,
5th District—No. 93-2609

J.D. NICHOLS, *et al.*,
Petitioners,

v.

JENO PAULUCCI, *et al.*,
Respondents.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entered by the court. See Fla. R. App. P. 9.330(d).

GRIMES, C.J., OVERTON, SHAW, KOGAN and ANSTEAD, JJ., concur

IN THE CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

Case No. 92-2231-CA16K

JENO PAULUCCI, and SILVER LAKES I, INC., a Florida corporation, individually and d/b/a PR PARTNERS, a Florida general Partnership,

Plaintiffs,

vs.

J. D. NICHOLS, NTS CORPORATION, a Kentucky corporation, NTS/FLORIDA RESIDENTIAL PROPERTIES, INC., a Florida corporation, ORLANDO LAKE FOREST, INC., a Florida corporation and BANC ONE MORTGAGE CORPORATION, a foreign corporation,

Defendants.

NICHOLS'S AND NTS'S MOTION TO DISMISS ACTION, TO QUASH PROCESS, AND TO QUASH SERVICE OF PROCESS

Defendants, J.D. NICHOLS ("NICHOLS") and NTS CORPORATION ("NTS"), move for entry of an Order dismissing the captioned action against them, quashing the process issued against them, and quashing service of process on them as the Court lacks personal jurisdiction over them and as grounds therefor would show:

1. Florida Rule of Civil Procedure 1.070(i) requires at a minimum that a plaintiff must plead the language of the statute when service of process is to be made under statutes authorizing service of process on non-residents. NICHOLS and NTS are citizens of Kentucky. Plaintiffs have sought long-arm jurisdiction over them under various provisions of *Florida Statutes* § 48.193(1) without

pleading that the causes of action asserted against NICHOLS and NTS arise out of NICHOLS and NTS doing any of the enumerated acts.

2. There must be personal injury or property damage to support long-arm jurisdiction under *Florida Statutes* § 48.193(1)(f). *Aetna Life & Casualty Company v. Therm-O-Disc, Inc.*, 511 So.2d 992 (Fla. 1987). As Plaintiffs have failed to allege anything other than economic loss, this Court lacks long-arm jurisdiction over NICHOLS and NTS under the authority of that statute.

3. Service of process issued against NICHOLS was made on Gregory A. Compton as registered agent for NICHOLS. This is not an authorized means of obtaining personal service on an individual under Florida law nor was Mr. Compton authorized to accept service on behalf of NICHOLS. *Florida Statutes* §§ 48.031 and 48.194.

4. NICHOLS does not individually operate, conduct, engage in or carry on a business or business venture in Florida and does not individually have an office or an agency in Florida. NICHOLS has not committed any tortious acts in Florida, either in an individual or representative capacity. NICHOLS does not individually own, use, or possess any real property within Florida. NICHOLS has not caused any injury, not to mention personal injury or property damage, to Plaintiffs in Florida by any acts or omissions outside Florida. NICHOLS has never engaged in solicitation or service activities in Florida and has never processed, serviced, or manufactured products, materials, or things used or consumed in Florida in the ordinary course of commerce, trade, or use. NICHOLS was not engaged in substantial and not isolated activity in Florida. There is no basis under *Florida Statutes* § 48.193(1)(a), (b), (c), and (f) and (2) to establish long-arm jurisdiction over NICHOLS. NICHOLS does not have the requisite minimum contacts with Florida required by the Due Process Clause. *Venetian Salami Company v. Parthenais*, 554 So.2d 499 (Fla. 1989).

5. NTS is a Kentucky holding company with its only office in Louisville, Kentucky. NTS does not operate, conduct, engage in or carry on a business or business venture in Florida and does not have an office or agency in Florida. NTS has not committed any tortious acts in Florida. It does not own, use, or possess any real property in Florida. It has not caused any injury, not to mention personal injury or property damage, to Plaintiffs in Florida by any acts or omissions outside Florida. NTS has never processed, serviced, or manufactured products, materials, or things used or consumed in Florida in the ordinary course of commerce, trade, or use. NTS has not engaged in substantial and not isolated activity in Florida. There is no basis under *Florida Statutes* § 48.193(1)(a), (b), (c), and (f) and (2) to establish long-arm jurisdiction over NTS. NTS does not have the requisite minimum contacts with Florida required by the Due Process Clause. *Venetian Salami Company v. Parthenais, supra.*

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery on this 17th day of September, 1992 to DAVID H. SIMMONS, ESQ., 120 S. Orange Avenue, Orlando, Florida 32802.

/s/ Richard F. Wall
RICHARD F. WALL, ESQ.
Fla. Bar No. 349518
HARTLEY & WALL
Suite 2810, Sun Bank Tower
200 S. Orange Avenue
Post Office Box 2168
Orlando, Florida 32802
407/422-7992
Counsel for Nichols and NTS